

UNITED STATES DISTRICT COURT

for the

Middle District of North

Carolina Division



Case No. _____

(to be filled in by the Clerk's Office)

GEORGE C. STEPHENS

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

CORRECTIONAL OFFICER DAWN LEAK

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

All other names by which
you have been known:

ID Number

Current Institution

Address

G.S.
~~DOE~~ George C. Stephens
2 - TON
2237429
SCOTLAND C.I. - 4860
C/O 22385 McIntosh's Bridge Rd.
Laurinburg N.C. 28352
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Job or Title (*if known*)

Shield Number

Employer

Address

Officer Dawn Leak
Correctional Officer
UNKNOWN
Warden Katy Poole
C/O 22385 McIntosh's Bridge Rd.
Laurinburg N.C. 28352
City State Zip Code
☒ Individual capacity ☒ Official capacity

Defendant No. 2

Name

Job or Title (*if known*)

Shield Number

Employer

Address

City State Zip Code
☐ Individual capacity ☐ Official capacity

Defendant No. 3

Name _____

Job or Title (if known) _____

Shield Number _____

Employer _____

Address _____

City _____

State _____

Zip Code _____

☐ Individual capacity ☐ Official capacity

Defendant No. 4

Name _____

Job or Title (if known) _____

Shield Number _____

Employer _____

Address _____

City _____

State _____

Zip Code _____

☐ Individual capacity ☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

1) Amendment V III (eight) (Deprivation of Right to be immune from Cruel/Unusual Punishment) (U.S. Const. tution); 2) Article 1, Sec. 27 (Deprivation of Right to be immune from Cruel/Unusual Punishment) (N.C. State Constitution)

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed. CORRECTIONAL OFFICER DAWN LEAK acted under color of North Carolina State law and under color of STATE OF NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY PRISONS POLICY & PROCEDURES, in her "Individual" and/or Official capacity, when... "See attached"

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

THE EVENTS AROSE on 27 November 2020, at approximately 12:30 A.M., when officer Leak (defendant) opened my wicket door, to hand me some toilet paper, without the presence of another officer / staff member, "See attached"

C. What date and approximate time did the events giving rise to your claim(s) occur?

27 November 2020, at approximately 12:30 A.M.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

On 27 November 2020, at approximately 12:30 A.M., Defendant Officer Dawn Leak, assigned to the M-CON Unit, 2nd Shift, - rotation, entered G-pool (Golf-pool), to make a routinely round. Because I had made an earlier request for toilet paper, Defendant Leak brought me some at this time. Defendant Leak was alone when she appeared at my cell door, executing her round, thus, "see attached."

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive. Plaintiff suffered pain, agony, and suffering (physically), as a result of Defendant Leak's Excessive Use of Force, constituting deprivations of Amendment 8 of U.S. Constitution and Article 1, Sec. 27 of the North Carolina State Constitution (Right to be immune from cruel and unusual punishment). Plaintiff went to medical but refused treatment, because Plaintiff was beaten up by staff, for the incident, and threatened.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims. Plaintiff seeks \$100,000.00 punitive damages and an additional \$100,000.00 actual damages, for Defendant's Leak's acts, which deprived Plaintiff of protection/immunity secured to Plaintiff within Amendment 8 of U.S. Constitution and secured to Plaintiff within Article 1, Sec. 27 of the North Carolina State Constitution, causing Plaintiff pain, agony, and suffering; and if possible, Plaintiff seeks lead way to amended complaint in the future, if necessary, and any other just compensation.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s). SCOTLAND Correctional Institution.

ION.

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☐ No

☒ Do not know

If yes, which claim(s)?

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance? SCOTLAND C.I. - 4860

2. What did you claim in your grievance? EXCESSIVE USE OF FORCE, CRUEL and UNUSUAL PUNISHMENT

3. What was the result, if any? UNFAVORABLE RESULTS - NO RELIEF

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

EXHAUSTED EVERY (ALL) STEPS TO HIGHEST LEVEL

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

☐ Yes

☐ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 29th of June, 2022

Signature of Plaintiff

George Christopher Stephens

Printed Name of Plaintiff

George C. Stephens

Prison Identification #

1237429

Prison Address

C10 22385 Mcbirt's Bridge Rd.

Laurinburg
City

N.C.
State

28352
Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address

IV. Statement of Claim - B. (Attachment - Page 1)

to my surprise, however, I was masturbating, not expecting the wicket door to come open, because there was no other staff member present and such is contrary to STATE OF NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY PRISONS Policy & Procedures. - After witnessing me masturbating, Defendant Officer Dawn Leak, moved by "anger" and "malice", administered not one (1), but two (2) "EXCESSIVE" burst of O.C. Pepper Spray to my genital areas, then left me to suffer in pain and agony, instead of presenting an opportunity to me for immediate decontamination.

- End of Section -

IV. Statement of Claim-B. (Attachment- Page 1)

to my surprise, however, I was masturbating, not expecting the wicket door to come open, because there was no other staff member present and such is contrary to STATE OF NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY PRISONS Policy & Procedures. - After witnessing me masturbating, Defendant Officer Dawn Leak, moved by "anger" and "malice", administered not one (1), but two (2) "EXCESSIVE" burst of O.C. Pepper Spray to my genital areas, then left me to suffer in pain and agony, instead of presenting an opportunity to me for immediate decontamination.

- End of Section -

II. Basis for Jurisdiction-~~D~~ Attachment - Page 1)
she having no genuine/legitimate security/penal
interest, used Excessive force on me, by way of
O.C. Pepper Sprayed, "maliciously" administered to
my genital area, even though there was no need
to restrain me, neither was her intentions to rest-
rain me, and though I posed "no" physical
threat or danger to anyone or myself.

- End of Section -

IV. Statement of Claim - D (Attachment 2 of 2
cell door), NOR was the force used to ~~prevent~~^{G.S.} prevent/cease
physical danger/harm to anyone, but force was used
out of anger/malice, with intentions of inflicting pain
upon my body/person. Though, I was masturbating, I
posed no physical harm to Defendant Leak thus force
was not necessary, but was Excessive. After pepper
spraying me, Defendant Leak did not make "immediate"
notice to Sgt. Soto / Sgt. Clark (sergeants on duty),
but let me sit in pain, agony, suffering, etc. Causing
a lingering effect (Burning sensation). After an
uncertain amount of minutes a Sgt. Soto, Sgt. Clark,
Officer Bradley, and Officer Hunt appeared at my cell,
and took me to be decontaminated.

My claims are supported by camera footage on 27 Nov-
ember 2020, at approximately 12:30 A.M.

- End of Section -

IV. Statement of Claim - D (Attachment Page 1 of 2)

because STATE OF NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY ^{G.S.} ~~PR~~ PRISONS POLICY & PROCEDURES provides, that no staff shall open a wicket door ^{G.S.} ~~and~~ on any Restrictive Housing Unit, save for within the presence of another staff member, I never thought that Defendant Officer Leak would open the wicket door contrary to the above-mentioned Policy and Procedures, instead, I thought she would place the toilet paper in the box built onto the outside of my cell door. However, Defendant Officer Leak did open the wicket door in violation of Policy and Procedures (no other staff member present), and when she did, I was in the process of masturbating. Defendant Officer Leak gave no ^{G.S.} ~~no~~ direct order for me to stop, nor gave any warning, but she did, in fact, retrieve her can of O.C. Pepper Spray, and moved by "anger and malice", she administered not one but two "EXCESSIVE" - "UNNECESSARY" and "UNWARRANTED" ^{G.S.} ~~burst~~ burst of O.C. Pepper Spray to my genital area, for the purpose of punishing me in a cruel and unusual manner. Officer Dawn Leak (defendant) "did not" use such force, spoken of herein, in an effort to restrain me (for there was no reason to restrain me - I was already restrained by the secured Restrictive Housing Segregation